

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. **76-1790**

MILTON KIRSNER AND COUNT REALTY, INC.,
Petitioners,

v.

REBECCA REID AND HATTIE REID,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO
THE BALTIMORE CITY COURT**

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Attorney for Petitioners.

TABLE OF CONTENTS

	PAGE
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS	2
STATUTES INVOLVED	2
STATEMENT OF THE FACTS	4
REASONS FOR GRANTING CERTIORARI	5
CONCLUSION	6
Appendix A—	
Certified copy of Judgments and Docket Entries	1a
Appendix B—	
Order of Court of Appeals of Maryland Denying Certiorari	3a

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The Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Baltimore City Court, entered on July 23, 1976, and the denial of Writ of Certiorari to the Court of Appeals of Maryland on March 18, 1977.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland denied a Writ of Certiorari to the Baltimore City Court (Petition Docket No. 444, September Term, 1976) on March 18, 1977 (Appendix B).

Judge Basil A. Thomas, in open court in the Baltimore City Court (Case No. 5097540), on an appeal from the District Court of Maryland for Baltimore City, affirmed the decision of the lower court as to the constitutionality of the statutes in question on July 23, 1976, with a Judgment Absolute entered on January 25, 1977 (Appendix A).

JURISDICTION

The denial of Certiorari by the Court of Appeals of Maryland was ordered on March 18, 1977. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257.

QUESTIONS PRESENTED

Is Section 9-14.1 of the Code of Public Local Laws of Baltimore City (1969 Edition), being Article IV of the Code of Public Laws of Maryland, constitutional?

CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the Constitution of the United States provides in part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction to equal protection of the laws."

STATUTES INVOLVED

Section 9-14.1 of the Code of Public Local Laws of Baltimore City (1969 Edition), being Article IV of the

Code of Public Local Laws of Maryland, provides as follows:

"(a) In any written or oral lease or agreement for rental of a dwelling intended for human habitation, the landlord shall be deemed to covenant and warrant that the dwelling is fit for human habitation. If the dwelling is not fit for human habitation, the tenant, in addition to any remedies which he otherwise has, is entitled to the following remedies that shall be exercised within thirty (30) days of occupancy:

1. An action or proceeding for breach of contract or warranty which may include a prayer for rescission of the contract;

2. Rescission of the contract, including the return of all deposits and money towards rent, paid during the period of the breach of the warranty or habitability and within thirty (30) days of the occupancy period.

Provided, however, that no action or proceeding for breach of this warranty or habitability shall be instituted by any tenant unless the landlord has notice of the conditions on the premises which constitute the breach of the warranty of habitability.

(b) (Definitions:)

1. For the purpose of this section "dwelling" shall mean a structure or that part of a structure which is used for or intended to be used as a home or residence by one person or by two or more persons maintaining a common household.

2. For the purpose of this section "notice" shall mean either (a) a violation notice from the Department of Housing and Community Development, or any other municipal or governmental agency or (b) a letter sent by the tenant or his agent to the landlord by certified mail.

3. For the purpose of this section "fit for human habitation" shall mean the premises shall not have any conditions which endanger the life, health, and safety of the tenants, including, but not limited

to, vermin or rodent infestation, lack of sanitation, lack of heat, lack of running water, or lack of electricity."

STATEMENT OF THE FACTS

On or about October 2, 1973, a woman initially identified as Rebecca Jones, subsequently shown at the time of trial to be Rebecca Reid, one of the Respondents, leased from one of the Petitioners, Count Realty, Inc. a Maryland corporation, a residence known as 1221 Poplar Grove Street, located in Baltimore City, Maryland. The term commenced on October 6, 1973 on a month to month tenancy, with one month's rent paid in advance. The Respondent allegedly took possession some time between October 6, 1973 and October 31, 1973. On November 6, 1973 the Respondent paid a second month's rent. The tenant vacated the premises without notice to the Petitioner. The Respondent filed this suit on February 21, 1975, claiming among other things:

"... that pursuant to Section 9-14.1 of the Code of Public Local Laws of Baltimore City, as amended, implied warranty of fitness for human habitation is contained in all oral agreements . . .
(6) That the lease agreement is void because it is in violation of the Baltimore City Law."

The constitutionality of Statute 9-14.1 of the Code of Public Local Laws was raised in the District Court of Maryland for Baltimore City, with the Court holding the statute to be constitutional. The Court entered a judgment in favor of the Respondent against both Milton Kirsner, as the President of Count Realty, Inc., and as an individual, and Count Realty, Inc., the Corporate record owner of the property.

On appeal filed with the Baltimore City Court, Section 9-14.1 of the Code of Public Local Laws was

again held constitutional in a non-jury trial *de novo*, on January 20, 1977. A judgment absolute was entered against both Defendants, Milton Kirsner and Count Realty, Inc., on January 2nd, 1977.

At trial, it was proved that no notice by certified mail, was ever sent to the Petitioners by the Respondent. A violation notice alluded to in the Respondent's Statement of Claim had been, in fact, cancelled on October 2, 1973, the same date that the Respondent paid the first month's rent. Other notices that had been issued by the Baltimore Department of Housing and Community Development were submitted in evidence, however, the testimony showed these notices had also been cancelled and that these notices were issued after the tenant had vacated the premises.

REASONS FOR GRANTING CERTIORARI

The issue presented in this case deals with a local statute and whether that statute violates the due process clause of the Fourteenth Amendment of the United States Constitution.

It is respectfully submitted that the term of the statute dealing with a "violation notice" is so vague, indefinite and broad that a variety of interpretations can be made. Violation notices issued by the Department of Housing and Community Development of Baltimore City deal with many diversified violations from a single broken window to vacant property. If a landlord has a minor violation notice, such as peeling paint on the outside of a house, is this notice significant enough to invoke the statute in question? Under the terms of the statute which only mention "violation notice", this type of violation notice would, and could be interpreted as notice under the statute.

The judges of the lower courts found that a cancelled violation notice, one which was not in existence at the

time of the occupancy, satisfied "notice" as set out in the statute.

To leave a term such as "violation notice" open to unlimited interpretations violates the Fourteenth Amendment of the Constitution.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JAY FRED COHEN,
514 St. Paul Place,
Baltimore, Md. 21202,
Attorney for Petitioners.

APPENDIX

*In the
Baltimore City Court*

John O. Rutherford , Clerk.

*Hattie Reid and
Rebecca Reid, a.k.a. Rebecca Jones*

v.

Milton Kirsner and Count Realty, Inc.

CERTIFIED COPY OF JUDGMENT AND DOCKET ENTRIES

(1) Oct. 9, 1975—Original papers and short copy of the docket entries from the District Court of Baltimore City, filed.

Appeal on behalf of Defendants from a judgment dated 8-27-75 in favor of the Plaintiff for \$499.00 and \$22.00 costs. (\$22.00 cost paid by pltf.) (\$10.00 cost paid by Defdt.) (Appeal filed in District Court 9-17-75)

Oct. 15, 1975—Entered Trial Docket.

(2) June 22, 1976—Defendant's memorandum fd. C.M.

(3) July 6, 1976—Plaintiff's memorandum fd. C.M.

July 23, 1976—Case tried before the Hon. Basil A. Thomas, without the aid of a jury.

July 23, 1976—The decision of the District Court is hereby "Affirmed" as to constitutionality of statute.

(4) July 28, 1976—Defendants motion to set aside decision on appeal and hold trial de novo on the merits fd. C.M.

Jan. 20, 1977—Case tried before the Hon. Basil A. Thomas, without the aid of a jury.

Jan. 20, 1977—Judgment nisi in favor of plaintiff, Rebecca Reid, for the sum of \$499.00 as against both defendants.

Jan. 25, 1977—Judgment absolute in favor of the Plaintiff, Rebecca Reid, for the sum of \$499.00 with interest from date and costs of suit as against both defendants.

Jan. 26, 1977—Certified copy of judgment and docket entries \$3.00.

SUSAN B. HANDWERGER, JAY FRED COHEN,
Attorney for Plaintiff, Attorney for Defendant.
State of Maryland, Baltimore City, Sgt.:

I hereby certify that the foregoing is a true copy of the judgment and docket entries in the above entitled cause, taken from the record of proceedings of the Baltimore City Court. I hereby further certify that said record contains no entry to show that the judgment aforesaid has been satisfied, either in whole or in part.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this 26th day of January, 1977.

JOHN O. RUTHERFORD,
Clerk of the
Baltimore City Court.

*In The
Court of Appeals of Maryland*

Petition Docket No. 444

September Term, 1976

(No. 5097540 — Baltimore City Court)

Milton Kirsner, et al.

v.

Hattie Reid and Rebecca Reid

ORDER

Upon consideration of the petition for writ of certiorari to the Baltimore City Court and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY,
Chief Judge.

March 18, 1977.